IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.13970 OF 2006

IN

NOTICE OF MOTION NO.2333 OF 2006

IN

L.C.SUIT NO.2759 OF 2006

WITH

CIVIL APPLICATION (STAMP) NO.13971 OF 2006

Mohd.Farhad Khan ...Appellant

Versus

The Municipal Corporation of

Greater Bombay ...Respondent

.....

Mr.B.P.Shukla for Appellant.

Mrs.Geeta Joglekar for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 22, 2006.

P.C.

1. Not on Board. Upon mentioning, taken on Board.

2. Heard Counsel for the parties.

3. Admit. Mrs.Joglekar waives notice for Respondent Corporation.

4. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

5. This Appeal from Order takes exception to the Judgment and Order passed by the Trial Court rejecting the prayer for ad-interim relief during the pendency of the Notice of Motion and the Suit instituted by the Appellant/Plaintiff essentially challenging the proposed action of the Corporation spelt out in notice under Section 351 of the Mumbai Municipal Corporation Act.

6. It is not necessary to advert to all the factual matrix of the case. I am prima facie convinced by the argument of the Appellant that the suit notice does not give the exact area of authorised structure (approved structure). In absence of the description given in the approved plan noted in the suit notice, it is inconceivable as to how the remaining portion marked can be

described as unauthorised. Be that as it may, the fact that the original structure is in existence and is approved, is not in dispute. The fact that Appellant is occupying the suit structure is also not in dispute. The fact that whether the entire structure is authorised, will have to be established after the relevant documents are produced by the Corporation in support of the notice under Section 351 of the Act. This is so because according to the Appellant, there is no extension effected by the Appellant to the suit structure. Trial Court will have to advert itself to all these aspects while considering the Notice of Motion. This appeal succeeds. Impugned order is set-aside. Instead, ad-interim order granted in favour of the Appellant to continue, which will operate till the disposal of the Notice of Motion.

7. Notice of Motion shall be disposed of expeditiously, preferably by end of September 2006.

8. Parties to complete their pleadings on or before 20th August 2006, so that, the Trial Court can proceed with the hearing of the Notice of Motion on 29th August 2006 when the same is fixed

for hearing or on such other date, so that, the same is finally disposed of before the specified time. This observation is made on the basis of the assurance given by the parties that they will extend full cooperation for early disposal of the Notice of Motion.

9. All questions in the Notice of Motion are left open to be decided on its own merits in accordance with law, uninfluenced by the observations made in the impugned order, or for that matter, in this order.

10. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.